IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 432 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI RAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 432 of 2000

MR DK MODI for Petitioner No. 1

MR MD MODI for Petitioner No. 1

MR BN KESHWANI for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/01/2002

ORAL JUDGEMENT

#. This is a Revision Application under Section 397 read

with Section-401 of the Criminal Procedure Code, challenging the judgment and conviction order recorded by the learned JMFC at Vanthali dated 19.4.1991 in Criminal Case No.200/1985 under which the learned Magistrate had convicted the present petitioner and his co-accused for an offence punishable under Section-7 read with Section-16 of the Prevention of Food Adulteration Act, 1954 and sentenced him to suffer S.I. for six months. The petitioner was also directed to pay fine of Rs.500/in default of fine he was required to further undergo S.I. for 3 months. The said judgment and conviction order were confirmed in Criminal Appeal No.16/1991 by the learned Additional Sessions Judge, Junagadh on 20.9.2000 under which the learned Additional Sessions Judge had partly allowed the said appeal. The learned Additional Sessions Judge has acquitted the 1st accused - Ravji Vashram and conviction of the present petitioner was confirmed by the learned Additional Sessions Judge.

#. Feeling aggrieved by the said judgment and conviction order, the petitioner has preferred this Revision application under Section 397 read with Section 401 of the said Code.

#. It has been mainly contended that the Food Inspector has not collected and sent the sample in the manner provided by the rules framed under the said Act. It has also been contended that in fact, no seal was affixed on the container and, therefore, the mandatory provision for sealing the container has been followed when the sample was sent to the Public Analyst. It is further contended that the sample was also sent to the Central Food Laboratory and as per the Central Food Laboratory, it is not noticed that the seal on the container as well as the specimen seal were compared by the Officer of the said laboratory in accordance with the Rule-4(4) of the Prevention of Food Adulteration Rule 1955. That, therefore, the judgment and order of the two courts below convicting the present petitioner cannot be sustained in the eye of law. There is apparent violation of the mandatory provision of the said rules. That, therefore, the present Revision Application be allowed and judgment and conviction order recorded by the two courts below against the petitioner may be set aside and the petitioner herein may be acquitted of the charge levelled against him.

#. On receipt of the Revision Application rule was issued and Mr.B.D.Desai, learned APP appears on behalf of the respondent.

#. I have heard the learned advocate for the parties and have perused the papers.

#. It has been contended on behalf of the petitioner by the learned advocate that there is apparent violation of the provision made in rules for sending the sample to the Public Analyst. For this purpose, the learned advocate for the petitioner had drawn my attention to the report of the Public Analyst, which has been produced at Annexure-A. It appears that as per this report there was no seal on the container in which the sample was sent. The provisions have been made for sealing the container in Rule-14 of the said rules. The said rule says that the sample of food for the purpose of analysis shall be taken in clean and dry bottle or jar or any other suitable container which shall be closed sufficiently tight to prevent leakage, evaporation or in case of dry substance entrance of moisture and shall be carefully sealed.

#. The object of providing this rule for sealing the container is obvious. Once the container is sealed there is a guarantee that the contents of the container would be intact till they reach the hands of the officers of the laboratory to which the sample has been sent. In the present case we find that there was no seal on the container as per the said report produced at Ex.21. So, on one hand, the report of the Public Analyst - Kanyyalal discloses that there was no seal on the container received by the said laboratory and, on the other hand, Rule-14 provides for the sealing of the container. The object of the said Rule has been indicated above. Looking to the nature of rule making it obligatory for the Food Inspector, to seal the container carefully clearly indicates that it was a mandatory provision which was required to be followed by the Food Inspector with a view to safeguard the interest of both the parties. It is, therefore, apparent on the face of the record that this mandatory provision has not been followed by the Food Inspector while sending the container to the Public Analyst at Bhuj. In other words, the original complainant and the Food Inspector has clearly not followed the provision contained in Rule-14 of the said Rules. As stated above, this Rule is mandatory and it has been provided for the safeguard of interest of both the parties. Once the seal is not there then there is possibility and probability of mischief being played with the contents of the container. Another possibility and probability would be that the entire container and the contents thereof may be changed and there may not made any proof about the same. In that view of the matter,

the report of the Public Analyst cannot be looked into for any purpose.

#. Now, it is a matter of record that this report of the Public Analyst was one of the document and material considered by the sanctioning authority at the time of sanctioning the prosecution, in aqccordance with the provision made in Section 20 of the said Act. Section 20 of the said Act provides that no prosecution for an offence under this Act, not being punishable under Section 14 or 14-A shall be instituted except by, or with the written consent of, the Central Government or the State Government.

#. This means that a complaint can be filed only on the strength of sanction issued in exercise of powers under Section 20 of the said Act. It is well settled that while sanctioning prosecution the sanctioning authority must apply his mind to the facts and circumstances and the material made available to him. The above report of the Public Analyest was one of the materials and papers received by and placed before the sanctioning authority. Therefore, it was within his knowledge and information that the sample sent to the Public Analyst was not sealed and, therefore, no prosecution could be ordered or sanctioned against the petitioner. Either this document was not placed before the concerned authority or he had not read contents of the document while sanctioning the prosecution. If the first thing is true then it is a sanction without applying his mind to the fact that a material document was not placed before him. If the second alternative is true then it goes without saying that there was total non application of mind on the part of the sanctioning authority when he knew that the container was not sealed and despite the said position, sanction was accorded. When the sanction has been accorded without due application of mind then it is not a sanction in eye of law and when there is no sanction, no prosecution can be instituted against the petitioner and in that event even the learned Magistrate could not have taken the cognizance of the offence in question.

##. Another aspect of the case is that according to the report of the Central Food Laboratory seal on the container and the specimen were intact. It is not mentioned in the said report at Ex.27 that twoseals were compared and found to be similar. For this purpose we can read provision of Rule 4(4) of the said Rules. The said provision states that on receipt of a packet containing sample for analysis, the Director or a Officer authorised by him, shall compare the seals on the

container and the outer cover of the specimen with impression received separately and shall note the condition of the seal thereon. Now so far as the latter part of the Rule is concerned there is compliance to the same since there is a mention in the report of the Central Food Laboratory that the seals were intact. However, so far the comparing is concerned the report is silent meaning thereby there is no mention in the report of the Central Food Laboratory that the seals on the container and the outer cover were compared with the specimen impression received separately.

##. Again this provision is mandatory. If the seals are compared and found to be similar then it can be said without any dispute that there could not be any probability or possibility with regard to the mischief being played with the sample. If that is not done then again there is possibility or probability for mischief being played with the contents and container. In that view of the matter, it is very clear that this mandatory provision has also not been followed by the Central Food Laboratory.

##. If factual aspect is in dispute, then the prosecution or complainant could have examined necessary witnesses with a view to show that the Rules were in fact complied with but there is some omission on the part of a particular officer or clerk in mentioning a particular fact showing the compliance to the Rules. In the present case the complainant did not examine any officer or other person from the Central Food Laboratory in order to show that the seals on the container were compared with the specimen impression of seal. So, on one hand, the report does not say that the seals were compared and on the other hand, there is no oral evidence to show that the seals were compared. This clearly shows that there was again a violation of the mandatory provision made in Sub-section 4 or Rule 4 of the said Rules. As said above this provision is also mandatory and, therefore, non-compliance of Sub-rule (4) of Rule-4 would lead us to infer that there is again probability of tampering with the contents and container. In that view of the matter, even this report cannot be taken into consideration for the purpose of holding that the food article collected by the original complainant was adulterated.

##. In support of his argument, the learned advocate for the petitioner has relied upon a couple of decisions. In Criminal Appeal No.494/1989 in the case of State of Gujarat vs. Shamji Velji Ghetiya, again it was a case in which the seals were not proved to have been affixed on

the container and that aspect was taken into consideration while dismissing the appeal of the State by the judgment of this Court dated 9.9.1998 (Coram : B.C.Patel,J.).

##. In the case of Clement Chhotalal Christian vs. Parshottam Savjibhai Parmar, reported in 1992 (1) GLR 434 it has been clearly laid down that it was obligatory on the Director of Central Food Laboratory to compare the condition of the seals on the container with the specimen seal and to make a note thereof. It is also observed in fact that he ought to have compared the seals on the container on the outer cover of the packet with the specimen impression of seal received by him separately. It has also been observed in that decision that if that provision is not complied with then conviction cannot be upheld against the accused.

##. Even in the case of Laxmichand Bhailal Thakker vs. State of Gujarat it has been clearly laid down that comparision with the specimen seal by the Director of Health Laboratory is must. It is further observed that failure to do so vitiates the trial.

##. In the present case also it is not on record that the Director of Central Food Laboratory had compared two seals and, therefore, as stated above there is again probability and possibility of tampering with the contents and containers. In that view of the matter, the said aspect was required to be considered by the two Courts below.

##. It is apparent that aforesaid aspect have not been appreciated by the two Courts below. Consequently it has to be held that the judgments and conviction orders of the two Courts below cannot be sustained in the eye of law. Moreover, for the foregoing reasons the report of the Public Analyst and the report of the Central Food Laboratory could not have been taken into consideration by the two courts below. If those reports are not considered and were not considered by the two Courts below then there was no evidence to show that the sample purchased by the Food Inspector from the petitioner could be treated to be adulterated and once the sample is not proved to be adulterated then there is no question of convicting the petitioner for selling adulterated food articles to the Food Inspector. In that view of the matter, no offence is made out against the petitioner and consequently he is entitled to acquittal.

##. For the foregoing reasons, this Revision Application

is allowed. The judgment and conviction orders recorded by the learned Additional Sessions Judge, Junagadh on 28.9.2000 in Criminal Appeal No.16/1991 confirming the judgement and conviction order against the present petitioner recorded by the learned JMFC on 19.4.1991 in Criminal Case No.200/1985 are quashed and set aside. The petitioner herein is ordered to be acquitted of the charge leveled against him. The petitioner is on bail, his bail bonds are cancelled. Rule is made absolute to the above extent.

(D. P. BUCH, J.)

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